IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No.

DR. F. ALLEN RUTHERFORD, et al.,
Petitioners,

vs.

THE AMERICAN MEDICAL ASSOCIATION, INC., et al.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

MEMORANDUM OF THE BOARD OF TRUSTEES OF THE UNIVERSITY OF ILLINOIS, GEORGE D. STODDARD, WARREN G. COLE AND DANELY SLAUGHTER IN OPPOSITION.

Insofar as these respondents are concerned, plaintiffs' complaint, stripped of verbiage, alleges (Para. 264-407; App. 65-97) that, during the years 1951-1952 the University

of Illinois, George D. Stoddard, its then president, and Drs. Warren G. Cole and Danely Slaughter, members of its medical teaching staff, participated in an inquiry into the efficacy of Krebiozen as a remedy for cancer. Dr. Andrew C. Ivy, then vice president of the University, was the chief medical sponsor of Krebiozen. The inquiry resulted in a report which found, *inter alia,* that "the material known as Krebiozen . . . has not been identified chemically, is available only in bulky paraffin oil suspension rendering it unsuitable for many forms of laboratory experimentation . . . has no curative value in the treatment of cancer. . . . [I]t would be inconclusive if not futile to conduct further clinical investigation unless it is first possible to dispel the mystery which surrounds the nature of the material. In default of this no further consideration should be given to the problem." Ex. 6, amended complaint, App. 269.

Thereafter, the University adopted an internal policy that "there can be no further clinical uses or determinations of Krebiozen on the part of the staff members of the University of Illinois at any time . . . henceforth, Krebiozen is to be disassociated from service or research programs." App. 91.

Plaintiffs were not engaged in Krebiozen research at the University. Neither they nor their physicians have sought the administration or distribution of Krebiozen through the service or research programs of the University. Thus, the internal and essentially academic decision of the University that "there can be no further clinical uses or determinations of Krebiozen on the part of the . . . University" has not adversely affected plaintiffs. Accordingly, they do not have standing to complain of the decision. *Poe* v. *Ullman,* 367 U.S. 497, 504 (1960).

Nor does it appear from the complaint that the respondent, Board of Trustees, has denied plaintiffs a federally protected right so as to give rise to a cause of action under the Civil Rights Act. 42 U.S.C. §§1983-85. As the Court of Appeals correctly held, "there is no legal requirement that the University . . . permit its personnel to experiment with Krebiozen or to endorse it, and plaintiffs have no more right to Krebiozen experimentation at the University . . . than they do at any research institution." App. 6.

The remaining allegations of the amended complaint and the petition here and the opinion below relate to other respondents.

The petition for writ of certiorari should be denied.

Respectfully submitted,

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